IN THE HIGH COURT OF BOMBAY AT GOA.

FIRST APPEAL NO. 67 OF 1998.

Shri Santan Martin Fernandes,
r/o House No. 26, Patepur,
Nuvem, Salcete, Goa. ... Appellant.

Versus

1. Shri Domnic A. Colaco,
   r/o H. No. 114, Kirbhat,
   Nuvem, Salcete, Goa.
2. The National Insurance
   Co. Ltd., Branch Office,
   1st Floor, Subray Chambers,
   Francisco Luis Gomes Road,
   Vasco-da-Gama, Goa. ... Respondents.

Mrs. A.A. Agni, Advocate for the Appellant.

Mr. J.P. Mulgaonkar, Advocate for the Respondents.

Coram : S.A. BOBDE, J.

Date : 18th June 2004.

ORAL JUDGMENT.

This appeal is preferred by an unsuccessful claimant against the Judgment and Order, dated 2nd May 1998, in Claim Petition No. 329 of 1993, by which the Motor Accident Claims Tribunal, South Goa, Margao, had dismissed the appellant's claim in toto.

2. On 7th May 1993, the appellant Santan Martin Fernandes, at about 6.00 p.m., alongwith one Jose Dias was riding towards Margao from Cortalim on his scooter. Santan was riding the scooter. According to Santan, when he reached the junction of the Loutolim-Quelossim-Cortalim roads a pickup driven by the respondent no. 1 came from behind and in the process of

overtaking him dashed against the scooter knocking him down alongwith the pillion rider. Santan became unconscious. Apparently some people from the public stopped the pickup and prevailed on respondent no. 1, who carried Santan to hospital for treatment.

3. In the hospital, that is, at Gracias Nursing Home he was operated on 8th May 1993 and was discharged on 11th May 1993. Apparently Santan did nothing even after he was discharged. He claims to have made some complaint to the police in June 1993, which has, however, not been proved. On 6th September 1993, that is, after a period of about 4 months, he made a report to the police and the police examined his scooter and also the first respondent's pickup and made a report. About Santan's scooter, the police found that the left side tool box cover, the right side foot rest and the guard on the side were damaged. On the pickup the police found no damages. These reports are at Exhibits 'L' and 'M' respectively.

4. Santan filed a claim before the Motor Accident Claims Tribunal on 8th October 1993 and claimed an amount of Rs. 3,50,686/- on account of special damages and expenses, loss of livelihood etc.. He examined 7 witnesses, four of whom, including himself and his pillion rider, claimed to have seen Domnic's pickup hit

Santan's scooter. He also examined two other witnesses, one on the question of expenses which were incurred at the hospital and the Doctor one Dr. Kantak, who immediately treated him. The first respondent examined himself and, eventhough he said that there were several other people travelling in his pickup, examined no one else. The learned Motor Accident Claims Tribunal, which heard the matter found that there were certain contradictions and discrepancies in the deposition of the claimant's witnesses and, therefore, disbelieved the claimant's case that the accident took place due to the rash and negligent driving by the first respondent. The learned Tribunal found that the contradictions were inherent. The Tribunal framed the following issues and answered them:-

> "1. Whether on 7.5.93, at about 6.00 p.m., claimant alongwith pillion rider Jose Dias drove scooter GA-02/E-1402 from Cortalim to Margao, and when he reached near the junction of Loutolim-Quelossim and Cortalim Road at Cortalim, Goa, pickup GA-02-T-6309 was driven in a rash and negligent manner from the back side of the scooter and in the process of overtaking, dashed with claimant's scooter, as a result of which, claimant suffered grievous injuries? O.P.C.
>
> 2. Whether the claimant was 30 years old, was earning Rs. 2,500/- per month and is entitled to a total compensation of Rs. 3,50,686/-? O.P.C."

The undisputed area of the case seems to be that, on 7th

May 1993, Santan, in fact, had an accident on a scooter and that he was taken by the first respondent in his pickup to the hospital where Dr. Kantak indeed treated him for Trimaleolar Fracture with dislocation of the right ankle. The Doctor also carried out an open reduction and internal fixation on Santan. He was under the Doctor's care from 8th May 1993 to 11th May 1993. Thereafter, due to further complications, on 10th May 1994, the Doctor performed a second operation and he was discharged on 14th August 1994 with advise to take rest till 21st August 1994. The Doctor stated that he was paid a sum of Rs. 12,500/- and produced a hospital bill for about Rs. 3,150/-. He also produced the X-rays and health certificate issued by him. More important the Doctor stated that Santan was brought into hospital by the first respondent Domnic and he admitted him since he was told the he was knocked down by a tempo. Undoubtedly this last statement cannot be evidence of the cause of his being knocked down since the Doctor himself did not see the accident. It is in any case clear that Santan did have an accident and was hospitalised and had to undergo one operation before he filed the claim petition and another thereafter.

5. What is at dispute is the cause of the accident. It is, in the circumstances, necessary to examine the evidence. Santan himself has stated that on

7th May 1993, at 6.00 p.m., he was riding a scooter from Cortalim to Margao with Jose Dias as his pillion rider and that a pickup bearing No. GA-02-T-6309 driven by the respondent no. 1 dashed against his scooter while overtaking him. After so dashing against him it stopped at a distance of 25 to 30 metres away. He and his pillion rider had both fallen down with the scooter on his legs and that of the pillion rider. There were injuries on his right leg, which was also fractured. He has stated that there were many people travelling in the rear portion of the pickup and the pickup stopped because the people had shouted. He was taken in the pickup to the hospital of Dr. Ajit Kantak. He has thereupon given the treatment administered to him including the insertion of a plate on his right leg and how he suffered thereafter. He has produced bills of the medical expenses incurred by him, his salary certificate and the accident report forms. Santan told the Court that he had gone for an engagement function and though alcohol was served there, he did not consume it. He emphatically denied the suggestion that he fell down from his scooter because he was under the influence of alcohol.

6. His pillion rider Jose has corroborated Santan's deposition in all material particulars. Jose emphatically denied the suggestion that he and Santan

were both under the influence of alcohol. The other direct evidence is by one Joao Baptista Sequeira, who knows Santan and told the Court that he saw the accident, that is, he saw the pickup bearing registration number of the first respondent's pickup dash against the scooter and moving on. He has deposed that people stopped the driver of the pickup, who, thereafter, took the injured to the hospital. This witness has candidly stated that the accident did not occur in front of him but behind him and he could not see which part of the pickup dashed against which part of the scooter. I see no reason why this witness could not have seen clearly the rest of the events, that is, the stopping of the pickup and the taking of Santan and the pillion rider away from the scene.

7. The second independent witness who directly saw the accident is one Nicolau Vaz, who corroborates the other eye witness in all material particulars. This witness in his cross-examination has specifically stated that he was walking behind the scooter when the accident took place.

8. The evidence adduced by the respondent no. 1 is his own. He says that he was driving the pickup and on the road, near the accident site, he was told by the persons who were in the pickup at the back that someone

has fallen and should be taken home. He says that he did not touch the man who was on the scooter and that the said man had been drinking. In cross-examination he also stated that he saw the claimant drinking at the party.

9. The learned Tribunal has largely disbelieved the claimant's version on the ground that the claimant had submitted the accident report on 6th September 1993 eventhough the accident took place on 7th May 1993 and that there are contradictions in the evidence.

10. Undoubtedly, the fact that the claimant did not take any action to report the matter to the police for a period of four months is unusual. But, I am of the view that it cannot be said to have the effect of entirely falsifying his case. The medical evidence shows that he had suffered a fracture and it is possible that that kept delaying him from taking action. In fact, it is clear from the evidence that he continued to have difficulty even for a period after he filed the accident claim. Moreover there is no dispute on the fact that the claim, which is filed on 8th September 1993, is well within limitation. Merely because the matter was not reported to the police for a period of about four months, would not have the effect of falsifying the fact of the accident and its cause.

11. As stated earlier the learned Tribunal has also found certain contradictions in the depositions of the witnesses. Undoubtedly, the contradictions pointed out by the Tribunal exist. But, what is necessary to be seen is whether the contradictions are material or incidental. For instance it is true that the fact that Kadamba bus was coming from the other side was mentioned for the first time by Santan before the Court and was not mentioned earlier in the complaint. Further the learned Tribunal has noticed that the pillion rider has stated that he and Santan had gone to attend the party whereas Santan has stated that they had gone to visit some relations. I am of the view that these contradictions are not irreconcilable and in any case do not falsify the rest of the deposition. On the other hand I am of the view that the appellant has established by independent evidence that the accident took place and it was caused by the first respondent's pickup dashing against him from behind on the road in question. There is clear evidence to this effect of the appellant, his pillion rider and two other witnesses. Eventhough one of the witnesses said that the accident took place behind him, as observed earlier, that witness corroborates the sequence of events in all material particulars, particularly in stopping of the pickup by the people and taking of the claimant and the pillion rider away from the scene. Having regard to these

circumstances, undoubtedly, there was an accident. It is not possible, without stretching credibility too far, to hold that Santan fell down on his own while riding a scooter. There is no reason at all for a person riding a scooter on the road to fall on his own. It was argued on behalf of the respondents that it is possible that Santan fell down because he had alcohol to drink. However, there is no evidence of this except the deposition of first respondent Domnic, who stated that he saw Santan drink at the party. No suggestion was put to the Doctor, who immediately treated the claimant,that the victim of the accident was under the influence of alcohol. Thus, there is no independent evidence at all to show that Santan was under the influence of alcohol. There is absolutely no plausible reason as to why he could have fallen down on his own but for the fact that he was hit by the first respondent's pickup. I am, therefore, of the view that the contradictions, rightly pointed out by the Tribunal, are liable to be ignored and it must be held on a preponderance of probabilities that the accident took place as claimed by the appellant due to rash and negligent driving by the first respondent.

12. The question is what is the amount to which the appellant is entitled? The appellant has claimed a sum of Rs. 3,50,686/- as follows:-

"22. Amount of compensation claimed:-

(a) Pain, suffering, mental anguish and trauma caused to the applicant and his family. ... Rs. 1,50,000/-

(b) Disablement caused to the applicant resulting in loss of earning capacity and loss of income of future life as he is very young of 30 years old... Rs. 1,50,000/-

(c) Medical expenses and other misc. expenses including travelling expenses as on today:-

(i)	Doctor fee..	Rs. 12,500/-
(ii)	Room and Hospital fee. ..	Rs. 1,300/-
(iii)	Medicines...	Rs. 1,386/-
(iv)	Travelling and other misc. expenses. ..	Rs. 15,000/-
(v)	Loss of income and salary for five months.	Rs. 12,500/-
(vi)	Scooter damage. ..	Rs. 2,000/-
(vii)	Cost and Court fee...	Rs. 6,000/.
		Rs. 50,686/-

Grand Total ... Rs. 3,50,686/-."

Having regard to the evidence on record, I find that there is no evidence of any pain, suffering or mental anguish to the appellant or any disableness caused to the appellant resulting in loss of earning capacity. However, there is no doubt that the appellant has incurred medical expenses solely due to the accident.

However, the expenses enumerated at Item (c) above, except travelling and other miscellaneous expenses may be considered to have been reasonably incurred by the appellant. Thus, it is clear that the appellant is entitled to pecuniary damages as claimed by him except the sum of Rs. 15,000/-, that is, to damages in the sum of Rs. 35,686/-.

11. In the circumstances, the Judgment of the Tribunal is set aside and the appellant is awarded damages in the sum of Rs. 35,686/- with interest at the rate of 9% from the date of filing of the application, that is, 8th October 1993 till payment. The appeal is allowed accordingly.

(S.A. BOBDE)
JUDGE.

ed's.